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UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF WASHINGTON

JENNIFER HOLLAUER;

Plaintiff,

v.

LIBERTY CREDIT SERVICES, INC.;
 PLOVIE LAW FIRM, P.S.; JOHN P.
 PLOVIE and JANE DOE PLOVIE
 husband and wife,

Defendants.

Case No.: CV-08-016-LRS

COMPLAINT

FDCPA

Plaintiff Jennifer Hollauer, through her attorneys, Michael D. Kinkley of
 Michael D. Kinkley, P.S., and Alan McNeil of Gonzaga University Legal
 Assistance alleges the following:

I. COMPLAINT

1.1. This is an action for damages and remedies against defendants, Liberty Credit Services, Inc.; Plovie Law Firm, P.S.; and John P. Plovie and Jane Doe Plovie husband and wife, pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”); for damages and remedies pursuant to the State of Washington Collection Agency Act, RCW 19.16, (“WCAA”); for damages and remedies pursuant to the Washington State Consumer Protection Act (RCW 19.86 et seq.) (“WCPA”).

II. JURISDICTION & VENUE

2.1. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d), 28 U.S.C. §1337, and 28 U.S.C. §1331. Supplemental jurisdiction exists for state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §2201 and §2202.

2.2. Venue is proper in this District under 28 U.S.C. §1391(b) because the Defendants conduct affairs and transact business in this District, a significant portion of the unlawful acts giving rise to this Complaint occurred in this District, and the plaintiffs reside within the territorial jurisdiction of this court.

III. FEDERAL QUESTION
SUBJECT MATTER JURISDICTION

3.1. Plaintiff Jenifer Hollauer is a “consumer” as defined by the FDCPA, 15 U.S.C. §1692a(3). She is an individual.

3.2. Defendant Liberty Credit Services, Inc. (“Liberty”), was attempting to collect a “debt” as defined by FDCPA, 15 U.S.C. §1692a(5).

3.3. Defendant Plovie Law Firm, P.S. (“Plovie Law Firm”), was attempting to collect a “debt” as defined by FDCPA, 15 U.S.C. §1692a(5).

3.4. Defendants John P. Plovie and Jane Doe Plovie (“Plovie”) were attempting to collect a “debt” as defined by FDCPA, 15 U.S.C. §1692a(5).

3.5. The alleged debt was an alleged obligation of plaintiff to pay money arising out of a transaction primarily for personal, family, or household purposes.

3.6. All credit card charges defendants alleged that Plaintiff Hollauer owed were for personal, family or household purposes.

3.7. Defendant Liberty is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

3.8. Defendant Liberty uses interstate commerce or the mails for the collection of debts.

1 3.9. The principle purpose of Liberty's business is the collection of debts.

2 3.10. Defendant Liberty regularly collects or attempts to collect, directly or
3 indirectly, debts owed or due or asserted to be owed or due another using
4 the telephone and mail.
5

6 3.11. Defendant Plovie Law Firm, is a "debt collector" as defined by the
7 FDCPA, 15 U.S.C. §1692a(6).
8

9 3.12. The principle purpose of defendant Plovie Law Firm's business is the
10 collection of debts.

11 3.13. Defendant Plovie Law Firm regularly collects or attempts to collect,
12 directly or indirectly, debts owed or due or asserted to be owed or due
13 another using the telephone and mail.
14

15 3.14. Defendant Plovie is a "debt collector" as defined by the FDCPA, 15
16 U.S.C. §1692a(6).
17

18 3.15. Defendant Plovie regularly collects or attempts to collect, directly or
19 indirectly, debts owed or due or asserted to be owed or due another using
20 the telephone and mail.
21

22 3.16. Liberty is a "collection agency" as defined by RCW 19.16.100(2).

23 3.17. Liberty is not properly licensed as a "collection agency" as required by
24 Washington law.
25

IV. PARTIES

4.1. Now, and at all relevant times, Plaintiff Jenifer Hollauer was a resident of the State of Washington residing within the territorial jurisdiction area of the United States District Court for the Eastern District of Washington.

4.2. Defendant Liberty is a corporation, engaged in the business of collecting debts within the State of Washington; which debts were originally owed to another.

4.3. The principle purpose of Liberty's business activities within the jurisdiction of this court is the collection of debts originally owed another using the mail and telephone, and defendant regularly attempts to collect debts alleged to be due another or originally owed to another. Defendant Liberty is doing business as a "debt collector" in the Eastern District of Washington of the United States District Court as defined by the FDCPA, 15 U.S.C. §1692a(6).

4.4. Defendant Plovie Law Firm and defendant John Plovie are the attorneys for Defendant Liberty.

4.5. Defendant Plovie Law Firm and defendant John Plovie approved the form of the state court complaint filed against Plaintiff Hollauer and the collection system using that complaint.

1 4.6. John Plovie is an employee of Plovie Law Firm. All acts done by John
2 Plovie were done on his behalf, on behalf of the marital community, and
3 on behalf of Plovie Law Firm, and on behalf of defendant Liberty.
4

5 4.7. All acts done by Plovie Law Firm were done on its own behalf, and on
6 behalf of Liberty.
7

8 V. FACTS

9 5.1. On January 13, 2007, Defendants Liberty and Plovie Law Firm caused
10 Plaintiff Hollauer to be served with the Summons and Complaint in this
11 matter by leaving two copies of the Summons and Complaint with Jason
12 Leach at 512 N. Walker #3, Medical Lake, Washington 99022.
13

14 5.2. On May 21, 2007, Defendants Liberty and Plovie Law Firm filed a
15 lawsuit against Sondra Kirk in Spokane County Superior Court in the
16 state of Washington (“state court collection lawsuit”).
17

18 5.3. The State Court collection lawsuit was an attempt to collect a debt that
19 was time barred by the relevant statute of limitations.
20

21 5.4. The State Court collection lawsuit was an attempt to collect an alleged
22 credit card debt.

23 5.5. Defendants Liberty, Plovie Law Firm, and John P. Plovie alleged the
24 existence of a written contract but ignored the choice of law provision to
25 Georgia.

1 5.6. Defendants alleged that the Washington statute of limitation applied.

2 5.7. Defendants are unable to produce writing.

3
4 5.8. The statute of limitations for an oral contract in the state of Washington
5 is three years.

6 5.9. Defendants alleged in the State Court collection lawsuit that date of last
7 payment was September 11, 2001.

8
9 5.10. Defendants state court lawsuit was time barred at the time of service and
10 at the time of filing.

11 5.11. The state court collection lawsuit complaint alleges an amount in excess
12 of any amount that Plaintiff Hollauer could possibly have owed even if
13 the claim were not time barred.

14
15 5.12. Defendants attempted to obtain Summary Judgment in the State Court
16 collection lawsuit.

17
18 5.13. Defendants filed false affidavits claiming business records exception to
19 the hearsay rules of evidence and in support of assignment.

20
21 VI. DEFENDANTS PRACTICES

22 6.1 Defendants Liberty and Plovie Law Firm use computer technology to
23 collect or attempt to collect debts.

1 6.2 Defendants Liberty and Plovie Law Firm use a computer program or
2 database to organize, and sort by each debtor, information about a debtor
3 and about any debts the debtor is claimed to owe.
4

5 6.3 Defendants Liberty and Plovie Law Firm collected or attempted to
6 collect time barred debts in excess of the amount owed using false
7 affidavits for default and or summary Judgment in the state court
8 collection lawsuit.
9

10 6.4 Defendants Liberty and Plovie Law Firm have standardized procedures
11 and used standardized forms to collect debts.
12

13 6.5 The state court collection lawsuit complaint was created using a
14 standardized form or template.

15 6.6 The template which was used to create the state court collection lawsuit
16 complaint is part of the computer program or database used by
17 Defendants Liberty and Plovie Law Firm as a collection system.
18

19 6.7 The state court collection lawsuit complaint was created by merging data
20 information from the collection database into the standardized template.
21

22 6.8 During 2002, Defendants Liberty, Plovie Law Firm and John Plovie sued
23 or threatened to sue more than 200 debtors in the State of Washington on
24 time barred debts.
25

1 6.9 During 2003, Defendants Liberty, Plovie Law Firm and John Plovie sued
2 or threatened to sue more than 200 debtors in the State of Washington on
3 time barred debts.
4

5 6.10 During 2004, Defendants Liberty, Plovie Law Firm and John Plovie sued
6 or threatened to sue more than 200 debtors in the State of Washington on
7 time barred debts.
8

9 6.11 During 2005, Defendants Liberty, Plovie Law Firm and John Plovie sued
10 or threatened to sue more than 200 debtors in the State of Washington on
11 time barred debts.
12

13 6.12 During 2006, Defendants Liberty, Plovie Law Firm and John Plovie sued
14 or threatened to sue more than 200 debtors in the State of Washington on
15 time barred debts.
16

17 6.13 During 2007, Defendants Liberty, Plovie Law Firm and John Plovie sued
18 or threatened to sue more than 200 debtors in the State of Washington on
19 time barred debts.
20

21 6.14 Defendants Liberty, Plovie Law Firm and John Plovie make other
22 collection efforts following the filing off the complaint against debtors in
23 the State of Washington.
24

25 6.15 On November 02, 2007 Defendants Liberty, Plovie Law Firm and John
Plovie, filed a motion and declaration for summary judgment, falsely

1 asserting information in the following documents: Letter of assignment
2 from Citibank and affidavit of Mitchell G. Johnson, purported employee
3 of Citibank.
4

5 6.16 On December 7, 2007, Defendants Liberty, Plovie Law Firm and John
6 Plovie argued for summary judgment and falsely asserted information in
7 the following documents: Letter of assignment from Bank One and
8 affidavit of Elizabeth Garcia, purported employee of Chase Bank.
9

10 6.17 On December 7, 2007, defendants' Liberty, Plovie Law Firm and John
11 Plovie state court collection lawsuit motion for summary judgment was
12 denied.
13

14 VII. VIOLATION OF THE FAIR DEBT
15 COLLECTION PRACTICES ACT

16 7.1 The debt collector Defendants, through their own acts, by and through
17 their agents and employees and their policies and procedures, have
18 violated the FDCPA which has caused damage to Plaintiffs.
19

20 7.2 The debt collector Defendants falsely represented the character, amount,
21 and/or legal status of the alleged debt, violating 15 USC § 1692e, 15
22 USC § 1692e(2)(A), and other provisions of the FDCPA..
23
24
25

1 7.3 The Defendants have threatened to take action that cannot legally be
2 taken, violating 15 USC § 1692e, 15 USC § 1692e(5) and other
3 provisions of the FDCPA..
4

5 7.4 The debt collector defendants made misleading and deceptive statements
6 in the collection of a debt in violation of 15 USC § 1692e.
7

8 7.5 Defendants have used unfair or unconscionable means to collect or
9 attempt to collect a debt in violation of 15 USC § 1692f including but not
10 limited to 15 USC § 1692f(1).
11

12 7.6 Defendants have collected or attempted to collect collection charges,
13 interest and attorney fees in excess of the collection charges, interest and
14 attorney fees in violation of 15 USC § 1692f, 15 USC § 1692f(1), and
15 other provisions of the FDCPA..
16

17 7.7 The attempt to collect or collection of such an amount is neither
18 expressly authorized by an agreement creating the debt nor permitted by
19 law, therefore in violation of 15 USC § 1692f, 15 USC § 1692f(1), and
20 other provisions of the FDCPA..
21

22 7.8 The Defendants violation of the FDCPA has caused actual Damage to the
23 Plaintiff.
24

25
VIII. VIOLATION OF THE WASHINGTON
COLLECTION AGENCY ACT

1 8.1 Defendant Liberty is a “collection agency” as defined by RCW

2 19.16.100(2).

3
4 8.2 Defendant Liberty uses computer collection software to collect debts.

5 8.3 The policy, procedures, practices and computer collecting software used
6 by Liberty result in the creation and mailing of certain writings and the
7 creation of information to base a lawsuit in a certain order.
8

9 8.4 The information and forms used by Defendant Liberty from January of
10 2004 to the – present were approved for use by Defendant Plovie Law
11 firm and defendant John Plovie.
12

13 8.5 Defendant Liberty and its defendant employees are in violation of RCW
14 19.16.250(14), 19.16.250(15), 19.16.250(18), and other sections of RCW
15 19.16. including but not limited to RCW 19.16.250.
16

17 8.6 Liberty is not properly licensed as a collection agency as required by the
18 WCAA and the Washington State Department of Licensing.

19 8.7 Liberty is collecting debts without a license in violation of the WCAA.
20

21 IX. VIOLATION OF THE
22 CONSUMER PROTECTION ACT

23 9.1 Defendant Liberty violated the Washington Consumer Protection Act
24 (WCPA).
25

1 9.2 Violation of the Washington State Collection Agency Act is a per se
2 violation of the Washington State Consumer Protection Act. (RCW
3 19.16.440).
4

5 9.3 Any violation of the Washington State Collection Agency Act
6 (WCAA) prohibited practices section, RCW 19.16.250 or licensing
7 sections is an unfair act or practice and/or an unfair method of
8 competition in the conduct of trade or commerce.
9

10 9.4 Any violation of the Washington State Collection Agency Act
11 (WCAA) prohibited practices section, RCW 19.16.250 or licensing
12 sections affects the public interest in violation of the Washington State
13 Consumer Protection Act. (RCW 19.16.440).
14

15 9.5 Defendant Liberty has violated the WCCA including but not limited
16 to the prohibited practices section (RCW 19.16.250).
17

18 9.6 Defendant Liberty has violated the WCCA including but not limited
19 to failing to obtain and maintain a license as required by RCW
20 19.16.110.
21

22 9.7 Defendant Liberty has violated the Washington Administrative Code
23 governing the actions of collection agencies.
24
25

1 9.8 The business of collection agencies, as well as all acts and practices of
2 collection agencies, debt collectors, are subject to the Consumer
3 Protection Act, RCW 19.86 and subsequent sections.
4

5 9.9 The Consumer Protection Act of the State of Washington requires that
6 all collection agents, debt collectors, abstain from unfair or deceptive
7 practices or acts and unfair methods of competition.
8

9 9.10 Defendants, personally and/or by and through their agents and
10 employees, policies and procedures, have engaged in deceptive acts
11 and practices, unfair acts and practices, and unfair methods of
12 competition that have caused injury to the plaintiffs.
13

14 9.11 Defendant has engaged in unfair and deceptive acts and practices in
15 attempting to collect an alleged debt from the plaintiff.
16

17 9.12 Defendant Liberty has is in the business of debt collection in trade or
18 commerce.
19

20 9.13 Unlawful and Unfair Debt Collections is against public interest.
21

22 9.14 The Defendant Liberty's actions were the direct cause of injury to
23 plaintiff's property.
24

25 9.15 The violations have harmed and unless enjoined will continue to harm
the public interest by causing Plaintiff to pay collection charges that are
unfair deceptive, unlawful, and an unfair method of competition.

X. DEMAND

WHEREFORE, plaintiff demands judgment as follows:

10.1 Actual damages;

10.2 Statutory damages pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(2)(A).

10.3 Costs and reasonable attorney's fees pursuant to the FDCPA, 15 U.S.C. §1692k(a)(3);

10.4 Costs and reasonable attorney's fees pursuant to the Washington Consumer Protection Act, RCW 19.86;

10.5 Treble damages pursuant to the Washington Consumer Protection Act, RCW 19.86;

10.6 Declaratory Judgment that defendants' practices violate the Fair Debt Collection Practices Act and/or the Washington Consumer Protection Act; and/or the Washington Collection Agency Act.

10.7 Injunction prohibiting defendant from attempting to collect collection fees, interest, attorney fees and other charges or any amount in excess of the amount allowed by law or contract, and/or prohibiting defendant from threatening or filing lawsuits on time barred debt and/or prohibiting defendant Liberty from collecting, attempting to collect or soliciting claims, or contacting anyone residing in the state of Washington for collection in the state of Washington

1 10.8 For such other and further relief as may be just and proper.
2

3 DATED this 11th day of January, 2008.
4

5 ***Michael D. Kinkley P.S.***

University Legal Services

6 /s Michael D. Kinkley
7 Michael D. Kinkley
8 WSBA # 11624
Attorney for Plaintiff

/s Alan McNeil
Alan McNeil
WSBA # 7930
Attorney for Plaintiff